

GARDENSTON. I think that this is a maritime cause, or contract of freightment to take in goods of a certain species. In place of that, the freighter takes in goods of another species, which is prohibited; and by that means the ship is forfeited. This is a breach of the contract.

MONBODDO. A contract of freight is a maritime cause; and, consequently, the breach of that contract is maritime.

HAILES. The only doubt is here, that the breach of the contract did not happen till the goods were landed; so that the offence for which the ship was condemned, did not take place at sea. It was for landing goods, not for hovering, that the ship was condemned.

On the 8th March 1776, "The Lords found the case maritime, and refused the bill of advocacy."

*Act. G. Wallace. Alt. Hay Campbell.
Reporter, Covington.*

1775. December 19, and 1776 June 13. JOHN BEUGO and JAMES BRYCE *against* DAVID MACLEIRY.

JURISDICTION.

Whether a Judge-admiral-depute has jurisdiction in causes merely mercantile?

[*Fac. Coll. VII. 218; Dict., App. I., Jurisdiction, No. 2.*]

GARDENSTON. I think that the Admiral-deputes have no jurisdiction in mercantile causes. The Judge-admiral is always a man of character and abilities. We have not the same security as to the Admiral-deputes. There may be no inconveniency in leaving such a jurisdiction with the Judge-admiral, but there may with the Admiral-deputes. The jurisdiction of the High-admiral is limited, by Act of Parliament, to maritime causes. This jurisdiction has been extended, by usage, to a cumulative jurisdiction in mercantile causes, and, I doubt not, for the benefit of the public; and this has been established by many decisions. But there is no decision in favour of the Admiral-deputes. The contrary was expressly found in the case of *Daes against Campbell*. The special plea of usage in that particular district of Clyde is out of all sight. A jurisdiction belonging to a class of judges must be equal in all its parts: it must belong to all or none. I can have no notion of a prorogation unless there were a radical jurisdiction. Parties must not be hurt by the carelessness or ignorance of their procurators in inferior Courts. My only doubt is how far this may be considered as a cause purely mercantile. It looks like a commission for bringing goods from a foreign country.

HAILES. The general question occurred in the case of *Daes and Campbell*, as to the Admiral-depute on the Forth at Alloa, but it was not determined any further than that the Court refused to sustain the jurisdiction of that Admiral-depute, who had not formerly assumed a jurisdiction in mercantile causes. The

judgment however went that length that it found the Admiral-depute on the Forth to have no right of exercising a cumulative jurisdiction in mercantile causes. If you find the contrary here, there will be one law on the Clyde and another on the Forth. I do not understand how Glasgow comes to be within the commission of the Admiral-depute. Glasgow is situated on the banks of the Clyde, but not on the river. Hamilton is as much on the Clyde as Glasgow, and indeed the Admiral-depute says that he exercises his jurisdiction so far up the river. If so, *Where* is it to stop? I do not see why he may not trace his jurisdiction up to the source of the river. If the Admiral of Galloway has a like opinion, he will go up the Annan, and so the two Admirals will meet at Ettrick-stane.

[N.B. After Lord Hailes had said this, a letter from the Admiral-depute was read, wherein he expressed the same idea, and said that he understood his jurisdiction to reach to where *wind and water shears*, and that, where his jurisdiction ended, *there* the jurisdiction of another Admiral-depute began, so that it would seem that all Scotland was under the jurisdiction of one Admiral-depute or another.]

KAIMES. The Admiral has a right to try maritime causes, in the first instance, by express statute. He has a cumulative jurisdiction in mercantile causes by use and wont. It does not follow that every depute has the same jurisdiction. I do not see how this can be acquired by custom alone, when the jurisdiction has not been controverted either in his own court or in this Court. The police of the country is deeply concerned here. A multitude of jurisdictions is a very unsafe thing. We have felt this evil formerly, and have been happily relieved from it. As to prorogation, I hesitate. Commissaries judge beyond L.40 Scots by practice, though the law is contrary. But I am clear that this is in no respect a maritime cause.

AUCHINLECK. The prorogation is the only thing which occasions any difficulty.

COALSTON. The Act 1681 does not limit the jurisdiction of the Admiral to maritime causes. I have no doubt of his jurisdiction having been *ab ante* established in mercantile causes. *His* possession will not give a right to the Admiral-deputes. But, as the High-admiral's jurisdiction is established by usage, I take it that a like jurisdiction in Admiral-deputes may be established by usage. All the deputes act by authority from the High-admiral. I doubt much as to the extent of this jurisdiction to Glasgow, and over the country. As to prorogation, there can be no prorogation *de causa in causam*. If you once hold that there is no original jurisdiction, I think that it cannot be prorogated. I am perfectly clear that this is no maritime cause. A maritime cause is distinguished from a mercantile by its nature. If this cause were held to be maritime, it would cut off one half of the causes which are tried in this Court in the first instance. But I think that the party should pay the expense in the inferior court, just as was done on an objection to the jurisdiction of the Justices of the Peace in Galloway, where the objection was not moved till after sentence.

COVINGTON. I do not see how the limits of this jurisdiction can be adjusted.

MONBODDO. The same possession that regulates the jurisdiction will regulate the limits of it.

KAIMES. Suppose a man in Linlithgowshire should submit to the Admiral's jurisdiction, Would *that* bind the whole inhabitants of Linlithgowshire?

ALEMORE. It is the business of this Court to keep inferior jurisdictions within due bounds. Notwithstanding our attention, we see them very apt to be enlarged by Justices of the Peace, Commissaries, Admiral-deputes. It is no advantage for a country to have many jurisdictions to go to. The Admiral's jurisdiction in Scotland was not wider originally than that of Admirals in other countries, though by degrees he has encroached. I do not dispute his authority in mercantile causes, for so it has been established. But I would not extend this farther than it has gone by the judgments of this Court. It is impossible to ascertain the jurisdiction as here claimed. How can one Admiral-depute have a jurisdiction and another not? One sheriff hangs, another does not, Shall we find that the one has a right to hang and the other not? I do not lay much weight on prorogation. The difference here is as essential as between civil and criminal, though not so great in the degree. If you allow prorogation, you will establish that very jurisdiction which you mean to abolish. If the one party has led the other into expense, let him pay for it.

MONBODDO. I do not speak of two or three instances, but of a general use. In a particular district, it may have been determined that the depute-admiral had no original jurisdiction, but there is no decision finding that he may not acquire it by usage.

AUCHINLECK. If the Admiral-depute has exercised a jurisdiction in Glasgow, his right may go so far.

On the 19th December 1775, The Lords found that there was no necessity for any farther condescendence of facts.

Diss. Coalston, Kennet, Monboddo.

Suspended the letters *simpliciter*.

Non liquet, Coalston.

"Found, that the suspender must refund the expenses in the inferior court."

Diss. Alemore, Gardenston, Kennet, Monboddo, Covington.

Non liquet, Kaimes. [This vote carried by Auchinleck's casting vote, as President.]

For Beugo, G. Wallace. *Alt.* W. Craig, Ilay Campbell.

Reporter, Covington.

1776. June 13.—**AUCHINLECK.** It would be dangerous thus to extend the jurisdiction of inferior Admirals. As to them there is no *delectus personarum*. Formerly the justices of the peace in Clydesdale were wont to adjudge estates; but this was illegal, and no use could sanctify it.

PRESIDENT. In the case of *Jamieson* the Court sustained the diligence on account of the practice, but determined nothing as to the jurisdiction. Cases which have not been objected to may stand. If every admiral-substitute may have a right to try all mercantile causes, it will be a great innovation in the law, especially since the Act 20th Geo. II. Had such a jurisdiction been hinted at when the statute 20th Geo. II. was framed, the Admiral-court would have gone the way of many others.

ALVA. Many mercantile causes may have come before the Admiral in Clyde, and may have remained unchallenged ; but *this* will not make a jurisdiction in one district which is not in another.

COVINGTON. If the depute of Clyde has such jurisdiction, every other Admiral-depute must have the same. The Judge of the High Court of Admiralty has acquired that right by usage ; but it will not follow that inferior judges have the same right. If a crime is committed, the High-admiral may grant warrant for apprehending the criminal wherever he is : but how shall the depute-admirals exercise a like jurisdiction ? If a man who lives in Fife has committed an offence, can the Admiral of Clyde punish him ? The jurisdiction of the depute-admiral must depend upon residence : How are we to ascertain the limits of that jurisdiction ?

JUSTICE-CLERK. What security has the nation as to the appointment of admiral-deputes ? Mercantile causes extend very wide. Procurators naturally advise their clients to go to the court which is at hand. Both judge and procurator have an interest in this ; and thus the causes of the greatest consequence may, for the conveniency of the procurators, and the emolument of the judge, be tried before one who has no knowledge of law.

On the 15th June 1776, " The Lords sustained the reasons of suspension of incompetency ;" adhering to their interlocutor, 21st December 1775.

Act. Ilay Campbell. *Alt.* G. Wallace.

Reporter, Covington.

No vote.

1776. *January 23 and June 14.* BENJAMIN GLOVER and OTHERS, Assignees under the Commission of Bankruptcy of Bedford and Son, *against* ROBERT VAZIE of Hexham, in Northumberland.

FOREIGN.

Whether assignees under an English commission of bankruptcy have a right of action entitling them to recover the bankrupt's effects in Scotland, and to compete for them ; and whether other creditors of the bankrupt are barred from competing with the assignees, or claiming a preference on separate diligence used by themselves against the bankrupt's effects ?

[*Faculty Collection, VII. 272 ; App. I., Foreign, No. 3.*]

GARDENSTON. The assignees cannot compete here on their letters to the debtors of Bedford and Son. There was no assignation ; at most an intimation only, which by itself is nothing.

MONBODDO. It has been often found that the assignees, under a commission of bankruptcy, may pursue for and make effectual the debts of the bankrupt even in this country.